

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1500 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

GOKALDAS KANJI RATHOD

Versus

VARSA MAGANLAL CHAUHAN

Appearance:

MR MS SHAH for Petitioner
MR MJ BUDDHBHATTI for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 17/11/2000

ORAL JUDGEMENT

#. This is landlord's revision under sec.29(2) of the Bombay Rent Act (for short, the Act) against the judgment and decree of the lower Appellate Court.

#. The controversy involved in this revision revolves in

a narrow compass. The landlord filed a suit for eviction of the tenant/respondent, alleging that the agreed rent was Rs.85=00 per month. It was alleged by the landlord that the tenant/respondent was in arrears of rent exceeding six months, which he did not pay despite service of notice of demand.

#. The suit was resisted by the tenant/respondent raising dispute of standard rent. According to him, the standard rent should be fixed at Rs.25=00 per month. He also pleaded that he has paid-up the entire amount and was not in arrears of rent exceeding six months.

#. The trial Court fixed the standard rent at Rs.85=00 per month. Finding that the landlord failed in establishing that the tenant was in arrears of rent exceeding six months, suit for eviction was dismissed. Decree for arrears of rent was passed at the rate of Rs.85=00 per month.

#. Feeling aggrieved, the tenant filed appeal claiming that the standard rent fixed by the trial Court was excessive. The landlord did not file any appeal against the decree of the trial Court refusing to grant the decree for eviction.

#. The appellate Court held that the provisions of sec.5(10) of the Act did not apply, in as much as, the premises was not let for the first time on September 1, 1940 and that the appellate Court compared almost equal accommodation situated in the vicinity of the disputed accommodation and concluded that the standard rent should be Rs.25=00 per month. The landlord felt aggrieved against this judgment and decree of the lower appellate Court, hence this revision.

#. The learned counsel for the revisionist Shri MS Shah contended that there is cogent evidence on record that it was first letting to the tenant/respondent after September 1, 1940 and as such, the provisions of sec.5(10)(b)(iii) will be attracted. Sec.5(10) defines the "standard rent" in relation to any premises, interalia where the property was first let after the first day of September, 1940; the rent at which they were first let. Shri Shah has made emphasis upon this clause and argued that since there is no dispute between the parties, that for the first time the disputed property was let out to the defendant after September 1, 1940, sec.5(10)(b)(iii) would apply and the lower appellate Court fell in error in comparing the accommodation in the vicinity, which according to the appellate Court was

slightly less in area and extent. The compared accommodation, according to the appellate Court fetched monthly rent of Rs.12=00 but, in view of shortage of accommodation and shortage of facilities, the lower appellate Court thought that Rs.25=00 per month will be reasonable rent of the disputed premises. As against this, Shri Budhhbhatti, learned counsel for the respondent contended that sec.5(10)(b)(iv) will apply, which provides that, 'the "standard rent" in relation to any premises means - in any of the cases specified in sec.11, the rent fixed by the Court'. Sec.11(1) provides that, 'in any of the following cases the Court may, upon an application made to it for that purpose, or in any suit or proceeding, fix the standard rent at such amount, as, having regard to the provisions of this Act and the circumstances of the case, the Court deems just.' Clause-(a) of sub-sec(1) of sec.11 provides that, 'where any premises are first let after the specified date and the rent at which they are so let is in the opinion of the Court excessive.' According to the learned counsel for the respondent, this provision applies, and if sec.5(10)(b)(iv) is read in the light of sec.11(1)(a), the Court was justified in fixing the standard rent by reasonably comparing the rental value of similar or shortly less accommodation in the vicinity.

#. Shri Shah further contended that, since there is no pleading by the tenant that the standard rent was excessive, the Court could not have determined the standard rent at Rs.25=00 per month. He has referred to the written statement of the defendant. However, it is difficult to accept the contention that in every case where letting takes place for the first time after September 1940, the standard rent will be the rent which was fixed at the time of first letting. If this is the interpretation of sec.5(10)(b)(iii) of the Act then the provision of sec.11(1)(a) will be rendered non-existent and nugatory. It is not in every case where letting takes place for the first time after September 1940 that the rent fixed at the time of first letting should be taken to be the standard rent. In view of sec.11(1) of the Act, the Court may, upon an application made to it for that purpose, or in any suit or proceeding, fix the standard rent at such amount, as, having regard to the provisions of this Act and the circumstances of the case, the Court deems just. This means that, the Court can fix the standard rent either on the application of the party or in any suit or in any proceeding, and while doing so, the Court shall be guided by the provisions of this Act and also by the circumstances of the case; and where any premises is let out for the first time after the

specified date and the rent at which the same was so let out, the standard rent may be fixed by the Court, which in its opinion is reasonable and not excessive. It was not necessary for the defendant to plead that the standard rent was excessive. If the defendant pleaded that the standard rent should be Rs.25=00 per month, it implies that he pleaded that the standard rent was excessive. Consequently, there was some indication from the pleading that the tenant intended to plead that the standard rent at Rs.85=00 per month was excessive. The lower appellate Court was, therefore, justified in fixing the standard rent on the facts and circumstances of the case. For so doing, the appellate Court was justified in comparing the rent of the adjoining premises or the premises situated near the disputed premises and having almost identical accommodation. It is however very difficult to find identical accommodation for the purpose. Two premises were considered by the lower appellate Court. The lower appellate Court, however, refused to take into consideration the rent of the premises of Moliben Raghobhai and Ramji Juthalal in the absence of specified date. The lower appellate Court refused to consider the rent of the premises in the tenancy of Moliben Raghobhai. The lower appellate Court considered the premises in the tenancy of Ramji Juthalal. The comparison made by the lower appellate Court is not arbitrary. Factual findings of the lower appellate Court hardly require any interference in this revision. The property in possession of the tenant consisted of a room measuring 8' x 10', a kitchen measuring 2'.6" x 4'; whereas, the property in possession of Ramji Juthalal consisted of a slightly bigger room and a lobby. There is no kitchen in that premises. Shri Shah further contended that there are additional facilities of electricity, water, latrine, bathroom and kitchen in the demised premises and looking to these facilities, the rent of Rs.85=00 per month can not be said to be excessive. It is, however, difficult to accept this contention. If the lower appellate Court has doubled the rent paid by Ramji Juthalal for slightly lesser accommodation, it committed no error either of fact or of law. There is no evidence that Rs.12=00 per month paid by Ramji Juthalal included electricity charges also. As such, the finding of fact recorded by the lower appellate Court requires no interference. The revision is accordingly dismissed with no order as to costs.

November 17, 2000. [D.C. Srivastava, J.]

/sakkaf

